

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 26th day of May 1998

BEFORE

THE HON'BLE MR. JUSTICE V. GOPALA GOWDA

WRIT PETITION No.8957/1988

BETWEEN:

Sri.Ningappa,
since deceased by L.R.

Smt. Ningamma,
W/o late Ningappa,
Major, R/o. 4th Cross,
Tank Mohalla,
Shimoga City.

(amended as per Court order
dated 30.11.1990)

..PETITIONER

(By Sri M.P.Eswarappa, Advocate)

AND:

1. The City Municipal Council,
Shimoga, by its
Commissioner, at Shimoga.
2. The Director of Municipalities
in Karnataka, Visveswaraiah
Mini Tower, Dr. Ambedkar
veedhi, Bangalore-1.
3. Sri.Puttappa,
s/o. Dodda Bylaiah,
Major, R/o. Tank Mohalla,
Shimoga City.

..RESPONDENTS

(By Sri N.K.Ramesh for R-1,
Sri H.G.Ramesh for R-3,
R-2 served)

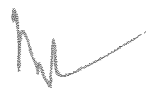


This Writ Petition is filed under Articles 226 and 227 of the Constitution of India praying to direct the R-1 to execute a title deed in favour of the petitioner in respect of land measuring 48 feet x 50 feet x 8/16 feet just adjacent to the petitioner's house and site Nos.1709/1672/2249 in Tank Mohalla, 4th Cross, Shimoga City after collecting an amount at the rate of Rs.50/- per square meter--.

This Writ Petition coming on for preliminary hearing in 'B' group, as having been heard and reserved for pronouncement of Order, this day the Court made the following:-

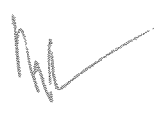
O R D E R

Petitioner has filed this writ petition seeking a writ of mandamus directing the 1st respondent to seek sanction of the government for transferring the land measuring 48 feet x 50 feet x 8/16 feet just adjacent to the petitioner's house and site, bearing Khatha Nos.1709/1672/2249 situated in Tank Mohalla, 4th Cross, Shimoga City, to the petitioner after collecting the amount at the rate of Rs.50/- per square meter as required under Section 72(2) of Karnataka Municipalities Act, 1964. Further, in the amended prayer sought for in I.A.No.III, which was allowed by an order dated 20th September 1989, it is prayed to issue a writ of certiorari quashing Annexure 'K' dated 10.6.1988 in No.C(3) CR.8/8 styled as 'Niveshana




Hakku Patra', urging the following facts and legal contentions.

2. The petitioner submits that he is the owner in possession of the house and site bearing Khata No.1709, 1670, 2249, measuring 48 feet x 36/29 feet. Just adjacent to the said site and house he has put up a cattle shed in the land measuring 48'/50' x 8/16 feet and he has been requesting the first respondent Municipal Council to regularise his ownership upon the said area which belongs to the first respondent City Municipal Council for better use of house and site. He further submits that representations were made by the other similarly situated persons for regularisation of such sites adjacent to their houses belong to the first respondent Council and the first respondent Municipal Council in its meeting held on 14.2.1987 passed a resolution vide subject No.4 that the adjacent land of various khatedars should be granted to the khatedars for their better use. The resolution is produced at Annexure-A to the writ petition. The petitioner further submits that his name is found at Sl.No.17 in the list produced at



Annexure-B. Earlier to that, the Standing Committee of the first respondent passed a resolution on subject No.19 in its meeting held on 6.11.1986 to collect Rs.50/- per square meter for the vacant site unauthorisedly occupied by the petitioner belonging to the first respondent Municipality and it has approved the said resolution in its meeting held on 31.1.1987 vide Subject No.29. Annexures 'C' and 'D' are produced in support of the above said contention of the petitioner. Annexure-E is the sketch produced by the petitioner to show the petitioner's building and site as also showing the encroachment of the vacant land belonging to the first respondent Council by the petitioner.

3. Learned Senior counsel Sri.M.P.Egwarappa appearing on behalf of the petitioner urged that the first respondent is duty bound to implement its resolution at Annexures-A, C, and D but it has not complied with the request of the petitioner to implement the said resolution. The second respondent, who is the controlling authority upon the first respondent, is also duty bound to see that the resolution of the first respondent Council are acted upon and



implemented. Since the first and second respondents have failed to discharge their statutory duties, the petitioner was constrained to approach this Court, seeking relief from this Hon'ble Court.

4. This writ petition was listed for preliminary hearing in 'B' group on 5.7.1989. On that date, this Court pass the order as under:

"It is seen from the records produced by the counsel for the respondent, the site bearing No.66-A abutting the main-road was sanctioned for sale at Rs.10/- per square yard as far back in the year 1981. There is also in the records the 'Hakku-patra' or deed of title said to have been given to the said grantee of the site. Annexure 'A' to the writ petition is a resolution in most general terms sanctioning vacant land adjoining the property to the owners of the houses and conservancy to be given to the respective owners at the price fixed. That resolution is of the year 1987. Annexure-B is the list. At Sl.No.17 his name is shown and grant in his favour is approved. But there is no



indication as to what is granted. The site plan given by the petitioner is at Annexure-E and the adjoining area which he claims to have been sanctioned in his favour is similar in shape and location to the land granted to Puttappa in 1981. Beyond that there is no other material by which this Court may come to the conclusion that the land shown in Annexure-'A' is still available for being sanctioned in favour of the petitioner. Unless that is established by petitioner, question of issuing mandamus does not arise. The petitioner is therefore directed to place additional material to establish that the area shown by him in Annexure 'E' to the petition is the area which was sanctioned in his favour as per the resolution at Annexure-A to the petition.

Three weeks time for compliance was given to the petitioner".

Again the matter was listed on 28.7.1989, the case was adjourned by one week, in the meanwhile the petitioner was directed to comply with the directions given by this Court vide Order dated



5.7.1989. Since the petitioner has not complied with the directions issued by this Court on 5.7.1989, the relief sought for cannot be granted in her favour as she has not established that the schedule property shown at Annexure-E is the adjoining area in respect of which she claims right and which has been sanctioned in favour of the petitioner, which is similar in place and location of the land granted to the 3rd respondent in the year 1981. In the absence of production of additional material as directed to establish that the area shown by the petitioner at Annexure-E to the writ petition is the area which was sanctioned in her favour, no relief can be granted in her favour. Hence, I pass the following order:

The writ petition is dismissed. However, liberty is given to the petitioner to work-out her rights before the appropriate Court.

Sd/-
JUDGE

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